EXCERPT FROM TRANSCRIPT OF HEARING HELD JANUARY 5, 1959, p. 39-40.

[District Court Caption and Style and Clerk's Certificate Omitted].

THE COURT: Are there any questions of these gentlemen?

MR. HYMAN: Your Honor, not knowing who the Florida Towing Company is, I would like to ask who Mr. Caplan is Trustee for?

I think it is important to the general creditors to know who the people are who are putting up the money.

MR. PETERS: May we have Mr. Spitzer reply to that?

MR. SPITZER: It is a group of New York industrialists, all of whom are in business. One is a member of the New York Stock Exchange; one is the head of a business that is listed on the New York Stock Exchange.

They are in a variety of businesses and are men who have formed a business to put up this money, and none of whom are in a business engaged in competition or that seeks to serve TMT.

MR. HYMAN: Is there a Mr. Joe Abrams interested in or who is a part of that group?

MR. SPITZER: There is no Mr. Joe Abrams in our group. He has an interest, I believe, in – No, there is not. No.

MR. HYMAN: The reason I ask is that we ran into Mr. Abrams and his family to such an extent in transactions involving the transfer of stock and the putting of stock on the market and the transfer of stock to Mr. Abrams and some of his relatives and the purchase of land at a valuation of perhaps $1.00 when the stock was actually $2.00 or $3.00 in the market, and quite some amazing and fantastic transactions, from our point of view.

MR. SPITZER: Mr. Hyman, there is a list of each person in this group, with the amount of each man's contribution, which has been submitted to the Trustee, and the Court. I am sure it is on file.

MR. ANDERSON: It is on file.

* * *

CERTIFICATE OF SERVICE ACCOMPANYING "PETITION OF PROTECTIVE COMMITTEE * * * TO FILE STATEMENT OF POSITION" AND "STATEMENT OF POSITION" [District Court Caption and Style and Clerk's Certificate and (April 16, 1963) Filing Stamp Omitted]

I hereby certify that a copy of the foregoing petition of Protective Committee For Independent Stockholders of TMT Trailer Ferry, Inc., for Leave to File Statement of Position, and a copy of Statement of Position of Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. were mailed on March 24, 1961 to each of the parties listed below:

Claude Pepper Law Offices
37 N.E. First Avenue
Miami 32, Florida

Securities and Exchange Commission
Washington 25, D.C.

Fowler, White, Gillen, Yancey,
Humkey, Esqs.
Industrial National Bank Building
Miami, Florida

Gay, Henderson & Anderson
913 Ainsley Building
Miami, Florida

Sinclair & Nicholson, Esqs.
Shoreland Building
Miami 32, Florida.

Matthews & Quinton, Esqs.
DuPont Plaza Building
Miami, Florida

Miller and Seegar, Esqs.
26 Court Street
Brooklyn 1, New York

Feibelman & Friedman, Esqs.
448 Seybold Building
Miami 32, Florida

Walter O. Basemore, Esq.
Langford Building
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Patton & Kenner, Esqs.
213 Security Trust Building
Miami 32, Florida

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Pan American Bank Building
Miami, Florida

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Miami, Florida

United States Attorney
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Admiralty & Shipping Section
Department of Justice
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Miami Beach, Florida

Smith and Axtell, Esqs.
216 American National Bank Building
Jacksonville, Florida

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Miami 32, Florida

Francis D. Wheeler, Esq.
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Adair, Ulmer, Murchison, Kent & Ashby,
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Phillip Cannon, Secy-Treas.
Florida Docking Masters Assoc.
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Jacksonville 1, Florida

William H. Madison
City Attorney
City Hall
Jacksonville, Florida

George F. Meister, Esq.
Smathers, Thompson & Dyer
Dupont Building
Miami, Florida

LANGBEIN, BURDICK AND SILVIAN
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West Palm Beach, Florida

J. K. Burnett, Vice President
P.O. Box 627
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Earnest Overstreet, Esq.
Dade County Courthouse
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Securities and Exchange Commission
250 Peachtree Street
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15 Broad Street
New York 5, New York

Dubbin, Schiff, Berman & Dubbin, Esqs.
DuPont Plaza Building
Miami 32, Florida

W. G. Troxler
1416 Dupont Building
Miami, Florida

Paul A. Louis
220 Security Trust Building
Miami, Florida

Scott, McCarthy, Preston, Steel, Gilleland, Esqs.
627 Ingraham Building
Miami, Florida

MALCOLM S. MASON
Attorney for Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc.
11 Park Place
New York, New York

/s/ IRWIN L. LANGBEIN

EXCERPT FROM TRANSCRIPT OF HEARING HELD APRIL 15, 1963, p. 5-8

[District Court Caption and Style and Clerk's Certificate Omitted]

MR. LANGBEIN: Further on TMT, Your Honor, Mr. Simmons arranged with me to bring on without notice a matter on which he was kind enough to give me his usual cooperation. He simply wanted me to present the matter to you and abide by your Order.

This relates to the appeal record that we are making up for the stockholders' appeal.

I wanted to put into that record something to indicate the fact that the rescission claim which is in litigation in the appeal was made a long, long time back and wasn't a brand new idea of ours.

THE COURT: What is that?

MR. LANGBEIN: The claim for rescission is that the stockholders could be treated as creditors.

You recall that the Court ruled —

THE COURT: Yes, it was suggested. You can put that in if you want to. Nothing that I know of was ever undertaken by any of the stockholders.

In that case I suggested when it was brought up, I think at least a year and a half or two years ago, I stated that there was nothing that the Court could do, that they had the right to proceed or not proceed as they saw fit.

MR. LANGBEIN: I don't recall that.

THE COURT: What I say is manifestly true. If they wanted to rescind their subscriptions they had a right to do so. I couldn't prevent or encourage them but they were free to make application for rescission with the permission of this Court or in the proceedings itself, as they saw fit.

MR. LANGBEIN: I think the Court is referring to an Order issued in April of 1959 in which we applied for leave to file a statement of position. At that time it was denied.

THE COURT: I said that every stockholder had the right to proceed without the control of the Court.

MR. LANGBEIN: I think the record is silent on that particular remark.

THE COURT: The record may be silent. I remember discussing it with you and Mr. Simmons at some length.

MR. LANGBEIN: I am not trying to make a retroactive record.

THE COURT: Let the record show what I have stated here, which is quite correct.

MR. LANGBEIN: What I did want to do was establish for the purposes of the record whether or not we made formal application in time and that we had raised the question somewhat earlier.

THE COURT: You had raised the question and even today if the stockholders had a right of decision this Court would welcome them as creditors if they were entitled to become creditors.

I do think there would be some questions about the matter that couldn't be passed on.

MR. LANGBEIN: So do I, very serious legal questions.

THE COURT: I think the matter was fully discussed at least a year and a half ago or two years ago.

MR. LANGBEIN: Mr. Simmons couldn't stipulate on matters out of the record without the Court's permission. I thought that rather than have anybody stipulate, what we would do was ask the Court now for leave to physically file the petition in which we raised that question and then it would speak for itself.

If the Court denied us the right at that time –

THE COURT: I denied the right at that time. I think it should be part of the record and you have permission to make it part of the record.

MR. LANGBEIN: That is all I want.

MR. LANGBEIN: I will file it as an exhibit.

THE COURT: If the 5th Circuit decides you have the right to become creditors, I have no objection.

MR. LANGBEIN: I will file it with the Court as if it were a rejected exhibit, then?

THE COURT: That's right.

RENEWAL OF PETITION FOR LEAVE TO FILE "STATEMENT OF POSITION"

[District Court Caption and Style and Clerk's Certificate and Filing Stamp Omitted]

On or about March 24. 1961, The Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. prepared and served upon all interested parties a document in this case entitled "Petition of Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. for *Leave to File* a Statement of Position" together with a copy of such Statement of Position; and a certificate of service. The Statement, among other things, asserted rights of rescission on behalf of all non-management stockholders.

These documents were however not actually filed with the Court, in deference to an oral ruling made in open court in April 1961, denying such leave. That ruling was embodied in a formal order dated April 26, 1961, in which the petition was "denied, without prejudice, to such right as Petitioner may have to raise the issues stated in the Petition at proper stages in these proceedings".

The Committee has asserted these recission rights at later stages, e.g., in the Committee's "Suggestions for formulation of a plan of reorganization" filed March 30, 1962. In the Committee's "Proof of Claim for Rescission" filed June 20, 1962, the Committee referred back to its making of the same contention in the "Statement". For purposes of the appeals which the Committee now has pending to the Court of Appeals for the Fifth Circuit from this Court's orders finding the debtor insolvent and confirming a plan of reorganization, the Committee deems it appropriate to confirm that it asserted rights of rescission on behalf of all independent stockholders as early as the "Statement" of March 1961, and that it then notified all parties of such assertion.

WHEREFORE the Committee prays leave to physically incorporate in the record the original petition and "Statement" referred to, together with the certificate of service thereof.

Malcolm S. Mason
11 Park Place
New York 7, New York
and
Langbein Burdick & Silvian
324 Datura Street
West Palm Beach, Florida

/s/ *Irwin L. Langbein*
Attorneys for Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc.

* * *

PETITION FOR DISALLOWANCE OF CLAIM OF PAULINE GOLDING

[District Court Caption and Style and Clerk's Certificate and (May 2, 1966) Filing Stamp Omitted]

Irma S. Mason, a party to the proceeding, objects to the issuance by the trustee of stock in the reorganized company to claimant Pauline Golding (No. D-48) and petitions for the cancellation of any stock so issued and for vacation of the Order of this Court dated March 30, 1966 approving the issuance of such stock, and for an order directing the trustee to make a full investigation of the circumstances of the alleged issuance to Pauline Golding of the purported obligations on which her claim is based, and the date at which and the consideration for which such purported obligations were issued. In support of this petition she respectfully shows the Court the following, on information and belief, the source of such information being primarily, as indicated, the trustee's Report of Investiga-

tion and sworn testimony and documents produced in the trustee's investigation (for convenience of reference certain documents are referred to herein as they appear in the record on appeal in the Court of Appeals; the trustee's Report may be found in the printed record in No. 18475 at pages 255 ff.):

1. By a letter dated November 17, 1965 and notarized November 19, 1965, Pauline Golding claims to be the owner of $115,000 in principal amount of 6% convertible notes due August 1, 1958, of TMT Trailer Ferry, Inc., all dated as of April 22, 1957, registered in her name.

2. By petition dated March 11, 1966, the trustee requested approval of the issuance of stock to Pauline Golding as a debenture claimant in the amount of $115,000 in addition to some 50 other claimants. The claims of the 50 other claimants initially totalled $74,300 but the trustee's petition requested approval for allowing these claims in the adjusted amount of $80,600 in addition to Pauline Golding's claim of $115,000. The trustee's petition was brought on for hearing on March 25, 1966.

3. By verified objections dated March 24, 1966, and by objections orally heard at the hearing on March 25, 1966, petitioner objected to the issuance of such stock to Pauline Golding.

4. By order dated March 30, 1966, the Court approved the issuance of such stock and denied the objections, without prejudice however to the filing of a Petition or separate suit seeking relief on the subject.

A. *The bonds were never validly issued.*

5. Pauline Golding is the wife of Arthur Shaffer (Tr. Rep. par. 18) who was a financial advisor of TMT (Tr. Rep. par. 13, 18, 28, B, 56, 57) and who breached the fiduciary obligations of his position (Tr. Rep. par. 57 and Recommendation 3). The trustee conducted an investigation of the activities of Arthur Shaffer. Petitioner attended the hearing at which Mr. Shaffer testified concerning his own and his wife's transactions in TMT and produced financial records.

The trustee's Report of Investigation also indicates that Shaffer's disclosure of all TMT transactions clearly included therein those of his wife Pauline Golding (Tr. Rep. par. 44, cf. 18, 57). The trustee's Report, which is confirmed by petitioner's understanding of Shaffer's testimony, does not reflect the acquisition of any notes not thereafter converted to stock and sold by the Shaffers. Even if there were no other circumstances casting doubt on the validity of the now-proffered notes, this would be sufficient to require an investigation by the trustee of the date when and the consideration for which and the circumstances under which the said purported notes were allegedly issued to Pauline Golding. These doubts are confirmed by the records of the debtor.

6. The purported notes in question are registered notes. This is expressly stated in Pauline Golding's affidavit. Examination of a copy of one of the purported notes shows express provision that the company may treat the record owner on the records of the company as the absolute owner for receiving payment and for all other purposes. But the records of the company did not show Pauline Golding as the owner, nor even the issuance of such amount of notes to anyone. They show a maximum of $79,000 worth, all of which are accounted for by the 50 other claimants whose claims are approved by the trustee.

7. The present proceedings were initiated June 27, 1957 (No. 18475, p. 21). In a verified petition of the debtor's subsidiary Trans-Caribbean Motor Transport, Inc., there is incorporated a consolidated financial statement as at June 30, 1957. That balance sheet shows under long-term liabilities of the debtor outstanding 6% Series "D" convertible notes, due August 1, 1958, as being $79,000 in amount. This manifestly does not include the $115,000 of purported notes claimed by Pauline Golding. (Record No. 19996, p. 440 at 444.2).

8. In a consolidated financial statement issued by the debtor with a notice of meeting dated September 20, 1957,

the same figure of $79,000 is given for the 6% Series "D" convertible notes due August 1, 1958, outstanding as at July 1, 1957.

9. A trial balance of the debtor's books as of October 31, 1957 shows the then outstanding such Series "D" notes in the same amount.

10. It is obvious that the notes purportedly held by Pauline Golding in the amount of $115,000 were not and cannot be included in the notes shown by the debtor's books to be outstanding, which did not exceed $79,000. Mr. Shaffer's review in 1960 of his transactions and Pauline Golding's did not assert the existence of such notes. The trustee's list of approved claims as at December 31, 1959 shows $74,300, well within the recorded amount (No. 18475, p. 358).

B. *If ever actually issued, the notes in question were issued in connection with fraudulent transactions and are invalid.*

11. The claim does not identify the transaction in which the notes held by the claimant were isssued. It is noted, however, that these notes bear the printed date as of April 22, 1957 and were necessarily issued later than that date. This is after the Carib Queen had broken down returning from its maiden voyage to Europe (Tr. Rep. par. 28).

12. The purported date of execution, as of April 22, 1957, was coincidental with a series of meetings held in New York in which the conspiracy group of Shaffer and Abrams and Erdman along with Rath and Gitlin were attempting to arrange for a transfer of control of the enterprise (Tr. Rep. par. 29).

13. The purported date of execution was also coincidental with other actions of the conspirators: it is known that on May 15, 1957, stock was issued for a price substantially below the then market to the group of Shaffer and Abrams, and of this stock Shaffer handled 150,000 shares, 115,000 of which went to his wife Pauline Golding (Tr. Rep. par. 30). It is probable in the light of the known

operations of this group that the coincidence of 115,000 shares of stock with the $115,000 of alleged notes is a significant one.

C. *Not only Arthur Shaffer but Pauline Golding personally was involved in a large number of improper transactions clearly indicating that she was privy to the frauds committed by the conspirators against the debtor and its public security holders.*

14. It is known that Pauline Golding was affiliated with the conspirator Abrams in a number of matters other than TMT as well as in TMT matters (affidavit of Sameth, No. 18475, pp. 226-227).

15. Shaffer speculated extensively in TMT stock and made large profits. A major part of these profits of over $244,000 was on stock acquired in his wife's name (Tr. Rep. par. 44).

16. These transactions involved stock issued to Pauline Golding without appropriate registration or other filing under the Securities Acts, and illegally sold by her in violation of the Securities Acts and in connivance with TMT's management which deliberately and improperly caused the stock to be issued without an investment legend, thereby defrauding purchasers of the stock who bought in the belief that it had been validly issued. Letters from the company to Manufacturers Trust, for example, directed the issuance of 165,000 shares of stock to Pauline Golding without an investment legend, July 27, 1956. Several other such letters exist.

17. On this single transaction Pauline Golding realized large improper profits at the expense of the stockholders; the stock and the bonds converted to stock cost her $1 per share (together with free bonus stock) at a time when the market for the stock was more than $3 per share and it was sold shortly on a continued high market (Tr. Rep. par. 13, 14, 17, 18, 19, 44).

18. The trustee's Report expressly comments on the ownership or control of large blocks of stock in the name of Shaffer and Abrams "or that of a wife or controlled

corporation" as indicative of the high degree of control in the affairs of TMT by the conspirators Shaffer and Abrams (Tr. Rep. par. 57).

19. The trustee's Report expressly comments that transactions such as those practiced by Pauline Golding of taking stock for less than the market price and selling it without registration injured TMT by decreasing its opportunity of obtaining reputable financing (Tr. Rep. par. 57).

20. The trustee's Report shows that about July 1956 Pauline Golding converted $150,000 of the $400,000 6% convertible notes issued in December 1955 and demanded and received advance interest and an additional 15,000 shares as a bonus for the conversion (Tr. Rep. par. 18). The stock was promptly dumped on the market (Tr. Rep. par 18 and 44). Eric Rath testified that this bonus was given to Pauline Golding because Shaffer and Abrams compelled TMT to pay it.

21. Like Alex Caplan who was Shaffer's front in the mortgage transaction (Tr. Rep. par. 32), Pauline Golding was also involved in Pierce Governor-TMT stock switches with Abrams (testimony of Arthur Shaffer). This is a characteristic Abrams manipulative device of which other examples are present in the record (Tr. Rep. par. 15, 16, 19, 38).

D. *Pauline Golding received improper profits at the expense of the debtor and its public security holders and is therefore subject to set-offs in excess of the amount of her claim.*

22. We have already noted, in paragraph 20, that 15,000 shares of TMT stock were issued to Pauline Golding as an improper bonus by reason of duress exerted by Shaffer and Abrams and were dumped on the public market by her in violation of securities laws. In paragraph 15, (Tr. Rep. par. 44) we have noted a minimum of $244,000 of profits received by Shaffer and Pauline Golding on improper trading in TMT securities. We have also noted in paragraph 17 that on a single such improper transaction Pauline Golding indi-

vidually realized large improper profits. All of these facts were ascertained by the trustee in his investigation and reported in his Report.

23. We have also noted in paragraph 19, as has the trustee, the general and sweeping injury to the enterprise of the type of financing in which Pauline Golding along with Shaffer and Abrams involved the debtor.

24. Thus, for example, the trustee expressly noted that the "business was wrecked by gross mismanagement, by unsound expansion through the sale of securities in disregard of the protective provisions of the Securities Act of 1933", par. 8; that "the rise and fall of TMT can be told in the light of circumstances and persons involved in its stock transactions", par. 10; and "when the insider group took stock for less than the market price and sold it without registration, they lessened TMT's chances of interesting a reputable financial institution in providing financing", par. 57. We have already seen that Pauline Golding was not only privy to this course of conduct, but personally participated in it and profited from it.

25. The trustee expressly and correctly recommended as to Shaffer, Abrams and Erdman that "their claims should be reduced by the profits they have made on sales of TMT stock which they acquired for private investment purposes, but which they sold in violation of the law at great profit to themselves" par. 58. He added more generally "A fraud was perpetrated upon TMT by those who obtained from it unregistered stock with no intention of holding it for investment" par. 60. We have seen that that is the case as to Pauline Golding. The trustee added further: "If facts come to light which indicate that others profited by such stock sales in violation of the law, it is the opinion of the trustee that they should likewise be required to account to the company for any profits realized" Par. 62. This analysis by the trustee is correct and is clearly applicable to Pauline Golding. She received large blocks of unregistered securities at prices under the market, issued

in part as a result of her husband's duress and as a result of the large control exercised by her husband and by Abrams with whom she was associated not only in this but in other matters, and she promptly resold those securities in a public speculative market, again without registration. On these transactions she realized large profits to the injury of both TMT and its public security holders.

E. *It was not previously known that the trustee proposed to allow Pauline Golding's claim.*

26. We have already noted in part A that Shaffer's testimony and the trustee's Report of his investigation did not disclose the existence of the purported notes claimed by Pauline Golding and that financial statements of the debtor negatived their existence.

27. Even if such purported notes had been known to exist, the trustee's explicit statements of disapproval of the transactions in which the Shaffers were involved and his explicit recommendation that persons in Pauline Golding's position be made to account left no room to suppose that the trustee would recommend allowance of any such claim by her.

28. When the trustee indicated that debenture holders would be allowed to share, this could only be understood as meaning that valid holders would so share. Neither then nor elsewhere until the trustee's petition of March 11, 1966, so far as petitioner is aware, was there any indication that Pauline Golding held $115,000 of such notes which the trustee was prepared to recognize in addition to the approximately $79,000 worth known to be held by others.

29. Her alleged notes were manifestly not included in the $74,300 of debenture claims reported by the trustee's auditor, February 29, 1960, as at December 31, 1959 (No. 18475 p. 358).

30. Her alleged notes were not included in the $47,100 of acceptance by debenture claimants listed by the trustee April 19, 1965 (NR 318).

31. No claim was filed by her within 60 days after January 15, 1959, the last day for filing debenture claims under the first reorganization plan (No. 18475, p. 47, 137). No claim was filed by her on or before August 1, 1962, the last day for filing debenture claims under the second reorganization plan (No. 19996, R 381). No claim was filed by her on or before April 7, 1965, the last day for filing creditor's claims "including debenture bondholders" under the present plan (No. 22652, NR 270). Under these circumstances it could not be assumed that the trustee had any intention of allowing such a claim.

32. It appears from a letter from the trustee's counsel, dated March 28, 1966, that prior to November 17, 1965 no claim had ever been filed for Pauline Golding.

33. The trustee has indicated that he construes the plan of reorganization as protecting the interests of all debenture bond holders whether or not a formal claim is filed. This is clearly contrary to the unambiguous terms of the court's order fixing a time in which creditors claims and claims based on securities must be filed (Order, February 3, 1958, No. 18475 p. 46).

34. We submit therefore that the claim is out of time and should be rejected on the present record. Although the claim is out of time we are not arguing that on an appropriate showing the time cannot be or should not be extended. On the contrary, we believe that appropriate extensions of time should be liberally made wherever justice will thereby be served. Nevertheless, we submit that such an extension should not be made by mere implication without any affirmative showing of equity. The burden is necessarily on the claimant to request and show cause for any such extension, and only if and when she makes such a showing can appropriate consideration be given to the propriety of the extension and the merits of the claim.

35. From these facts of record, it appears that:

(a) Pauline Golding was in privity with the prime conspirators Abrams and Shaffer and therefore her claim should be disallowed or at least subordinated to claims of stockholders injured by the conspirators' actions;

(b) by her own transactions she directly injured TMT and injured public stockholders by improper acquisitions and illegal sales of securities and her claim should therefore either be disallowed or at least subordinated to those of stockholders;

(c) by illegal and fraudulent transactions in which she directly participated Pauline Golding has realized large profits in excess of the amount of her claim and therefore as a minimum these profits should be set-off against her claim and her claim should therefore be denied.

We further submit that the above facts showing ample basis for disallowance of the present claim are derived from an investigation primarily directed to other issues. It is therefore certain that the trustee had and has a duty, as a minimum, to pursue a full and adequate investigation of all of the relations of Pauline Golding with TMT.

Respectfully submitted,

/s/ Irwin L. Langbein
Attorney for Petitioner
Irma S. Mason
301 Citizens Building
West Palm Beach, Florida

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

IRMA S. MASON, being by the undersigned officer first duly sworn, upon her oath, says that she is the Petitioner who makes the foregoing Petition for Disallowance of Claim of Pauline Golding (D-48) and that it is true except as to those matters stated on information and belief, which statements she believes to be true.

/s/ Irma S. Mason

Sworn to and subscribed before
me this April 20, 1966

/s/ David Lench
Notary Public, State of New York [SEAL]

MOTION OF TRUSTEE TO DISMISS PETITION FOR DISALLOWANCE OF CLAIM OF PAULINE GOLDING

[District Court Caption and Style and Clerk's Certificate and (May 9, 1966) Filing Stamp Omitted]

The Trustee, C. GORDON ANDERSON, by his undersigned counsel moves to dismiss the PETITION FOR DISALLOWANCE OF CLAIM OF PAULINE GOLDING filed on behalf of one Irma S. Mason on the following grounds:–

1. Petitioner is a stockholder of the debtor and as such has no standing to object to the claim.

2. Unsecured creditors of the debtor are the only parties whose interests are involved in the allowance of the Pauline Golding claim, and no such creditor has filed any objection thereto although notice of the hearing held on March 25, 1966, for consideration of the claim was sent to all parties entitled to notice of proceedings herein.

3. The disallowance of the claim in toto would not result in the solvency of the debtor, and would therefore be of no benefit to Petitioner or other stockholders.

4. The objections to the claim based upon failure to file a formal claim within the times set for filing such claims are without merit, this court having by its order of March 30, 1966, approved the Trustee's method of recognizing the holders of debenture bonds as claimants.

5. All of the objections to the claim are based upon facts disclosed and fully reported by the Trustee in his Report of Investigation filed herein on July 1, 1960. It was determined by the trustee, and approved by this court, in 1962 when the present Internal Plan of Reorgani-

zation was being considered, approved, accepted by the creditors, and confirmed that there would be no actions brought against Arthur Shaeffer or Pauline Golding and certain others as a result of apparent irregularities that may have occurred in the issuance of TMT stock. It was at that time and is still the opinion of the Trustee and of his counsel that benefits to be derived from such litigation are remote and do not warrant the trouble and expense of prosecution. This decision has been reached after careful evaluation of all factors involved.

6. The Plan of Reorganization has been substantially consummated and it would not benefit the reorganized company to engage in litigation at the request of one of the former stockholders.

DATED this 9th day of May, 1966.

/s/ William P. Simmons, Jr.
Shutts & Bowen
First National Bank Building
Miami, Florida 33131
Attorneys for C. Gordon
Anderson, Trustee

ORDER ON PETITION RE CLAIM OF PAULINE GOLDING

[District Court Caption and Style and Clerk's Certificate Omitted: No Clerk's Filing Stamp Shown]

Upon consideration in open court of the PETITION FOR DISALLOWANCE OF CLAIM OF PAULINE GOLDING, filed by counsel for Irma S. Mason, and it appearing that the issues raised in said petition should not be considered by this Court until after the United States Court of Appeals for the Fifth Circuit has decided pending appeals that have been taken by The Protective Committee for Independent Stockholders of TMT Trailer Ferry Inc., it is

ORDERED, ADJUDGED and DECREED that further consideration of the said petition of Irma S. Mason and of the motions which have been filed by the Trustee and by counsel for Pauline Golding with respect thereto are hereby deferred for further consideration until after the appellate court has acted on the appeals now pending before it from various orders of this court.

DONE and ORDERED at Miami, Dade County, Florida, this 20th day of May, 1966.

/s/ David W. Dyn
Chief, United States District Judge

Letterhead of Securities and Exchange Commission

VIA AIRMAIL May 25, 1966

Edward W. Wadsworth, Esquire
Clerk, United States Court of Appeals
for the Fifth Circuit
Louisiana Wild Life & Fisheries Building
400 Royal Street
New Orleans, Louisiana 70130

Re: *The Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. C. Gordon Anderson, Trustee,* (C.A. 5, No. 22,652)

Dear Mr. Wadsworth:

We have recently received from the Clerk of the District Court in Miami, Florida, a pleading filed on behalf of the Chapter X Trustee of TMT Trailer Ferry, Inc., in which the Trustee, apparently for the first time, makes the following disclosure which appears relevant to issues in the above-captioned appeal that was argued before a panel of the Court on March 16, 1966:

> "It was determined by the Trustee, and approved by this court, in 1962 when the present Internal Plan of Reorganization was being considered, approved, accepted by the creditors, and confirmed that there would be no actions brought against Arthur Shaeffer or Pauline Golding and certain others as a result of apparent irregularities that may have occurred in the issuance of TMT stock."

A copy of the pleading, in paragraph 5 of which this sentence occurs, is enclosed.

In briefing and in argument in this Court, this Commission and the appellant Stockholders' Committee contended that there had been inadequate hearings on matters of importance to the stockholders throughout the reorganization proceeding. This contention was strongly disputed by the Trustee. The above quotation shows that an important agreement not to sue was given to Pauline Golding by the Trustee in 1962 without, as far as we are able to determine from the record, any disclosure of that fact until now. Furthermore, the Trustee apparently construes this agreement as one to allow as an unsecured claim the $115,000 face amount of debentures she allegedly holds. notwithstanding any defenses or offsets which the Trustee might otherwise be entitled to assert.

Pauline Golding is the wife of Arthur Shaffer, who is the principal participant in the Caplan mortgage claim discussed in the briefs and in oral argument. The determination by the Trustee and any approval by the Court of an agreement not to sue Pauline Golding appears to have been made *in camera* in 1962, presumably at the same time it was determined that the Caplan mortgage would be settled. In briefs and oral argument in the pending appeal the Commission and the Committee have contended that the Caplan mortgage settlement gave too much away and it now appears that even more was given away than the securities holders were advised. This emphasizes the contention made on the

appeal that there should have been a hearing at which proponents for the settlement would have had to have made a showing to justify it.

We believe that the Court would wish to be informed of this development. We would appreciate your advising us whether a formal motion should be filed to bring this matter to the Court's attention or whether this letter might serve the purpose. Copies of this letter and of the attached enclosure are being sent to all parties to the appeal.

Sincerely,

/s/ David Ferber
Solicitor

Enclosure

Letterhead of United States Court of Appeals, Fifth Circuit

May 27, 1966

Honorable David Ferber
Solicitor
Securities and Exchange Commission
Washington, D.C. 20549

Re: *The Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. C. Gordon Anderson, Trustee (C.A. 5, No. 22,652).*

Dear Mr. Ferber:

Your letter of May 25 has been called to the attention of the Court and, in response to the last paragraph of your letter, I would advise that no formal motion is needed to bring this matter to the Court's attention. The letter is suf-

ficient for that purpose, unless further information is hereafter requested.

Sincerely yours,

/s/ Edward W. Wadsworth
Clerk.

cc: To All Parties to the Appeal.

Letterhead of Shutts & Bowen

May 27, 1966

Mr. Edward W. Wadsworth, Clerk
United States Court of Appeals
for the Fifth Circuit
400 Royal Street
New Orleans, Louisiana 70130

Re: The Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. C. Gordon Anderson, Trustee, (C.A. 5, No, 22,652)

Dear Mr. Wadsworth:

We have received a copy of a letter addressed to you regarding this case dated May 25, 1966 and signed by David Ferber, Solicitor for the Securities and Exchange Commission. As attorneys for the Appellee, the Trustee in reorganization, we object strenuously to Mr. Ferber's letter or any of its contents being brought to the attention of the court in connection with this appeal.

The case was argued several months ago and the record is closed insofar as the issues are concerned. It is not proper for the court to consider facts not in the record, especially where they concern matters that have occurred *since* the completion of the record and even since the argument of the case.

Mr. Ferber's letter grossly misrepresents the effect and intent of pleadings filed subsequent to the argument of the

case on appeal, and we do not intend to argue the matters presented in the letter. We earnestly trust that you will return the entire matter to Mr. Ferber and advise him that the court cannot consider it.

Yours very truly,

William P. Simmons, Jr.
Shutts & Bowen
Attorneys for C. Gordon
Anderson, Trustee

cc: Other counsel of record in the appeal.